

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0327

CHARLES L. CADDELL,

Plaintiff and Appellant,

v.

FILED

JUL 15 2010

HELENA ELDERHOUSING, INC., a Montana corporation and
ACCESSIBLE SPACE, INC., a Minnesota corporation,

Ed Smith

CLERK OF THE SUPREME COURT
STATE OF MONTANA

Defendants and Appellees.

**PLAINTIFF/APPELLANT OPPOSITION BRIEF
TO
DEFENDANT/APPELLEE MOTION TO DISMISS APPEAL**

On Appeal from the District Court of the
First Judicial District Court of the State of Montana
in and for the County of Lewis and Clark

APPEARANCES:

CHARLES L. CADDELL
Aspen Village Unit 103
615 Janet Street
Helena, MT 59604
**PRO SE PLAINTIFF AND
APPELLANT**

IAN MCINTOSH
CROWLEY FLECK PLLP
45 Discovery Drive
P.O. Box 10969
Bozeman, MT 59719-0969
Phone: (406) 556-1430
**ATTORNEY FOR DEFENDANTS/
APPELLEES HELENA
ELDERHOUSING, INC. and
ACCESSIBLE SPACE, INC.**

PRELIMINARY

Appellant's opposition to Defendants Helena Elderhousing Inc. and Accessible Space, Inc.'s Motion to dismiss appeal is presented with assumption that the District Court Record is now on File with the Court so that reference may be made to the Docket Entry's. Appellant has responded to Defendant's Counsel inquiry, as to his objection to this Motion to Dismiss, as per Exhibit C-1.

Appellant will refer to himself from hereon as Caddell and the Defendant corporations as "Landlord"

BACKGROUND

Landlord Exhibit A recites in plain words what the District Judge Jeffrey Sherlock commanded Landlord's Counsel to do. The words are clear, i.e.

.....Defendants' motion for summary judgement is GRANTED. Counsel for HTI and Accessible Space shall prepare a judgment dismissing this matter with prejudice to all Defendants.....

Dkt #52 pg. 8

Such a judgment was not prepared!

On November 6, 2009 Caddell filed with the Clerk of the District Court a Rule 60(b) Motion, [Dkt #56], a Brief-in-Support [Dkt #57]. Landlord's Counsel filed Opposition Brief, [Dkt #58] To which Caddell made Reply, [Dkt #59]. The 60(b) was now ripe for Judge Jeffrey Sherlock decision.

Caddell requested a right to be heard on the 60(b) [Dkt #60] Judge Sherlock vacated the Hearing. (Dkt #61). Caddell awaited Court decision! Frequent calls were made to Clerk of Court making inquiry as to the entry of any Judgment or an Order as to the pending Rule 60(b) Motion. The various Deputy Clerk's who made response to the calls gave assurance that when a Judgment or Order came down and was filed that Caddell would receive copy as had been custom in the case

Caddell was in a state of "awaiting" for a period of 6 months and 14 days for receipt in the mail of a copy of any Judgment or 60(b) Order, when on May 4, 2010 he entered St. Peters Hospital with a "near death" attack of pneumonia. On May 5, 2010 a Hospital worker advised that phone inquiries had been received as to his physical condition. On May 6, Caddell was transferred to the Veterans Hospital at Fort Harrison. On May 7, a Hospital workers advised that a phone inquiry had been received making inquiry as to his physical condition.

That Caddell has good reason to believe that the inquiries as to his physical condition were made by Counsel's Office, because of hearing that he was "close to death"

That while still hospitalized Caddell received in the mail from the Landlord's Counsels Office a May 18, 2010 Postmarked Envelope containing [Dkt #62] document labeled an "order" Envelope, Exhibit C-2.

That Caddell Filed with the Clerk of Court on June 2, 2010 a Motion to Vacate the [Dkt #62 Court Order] with attached Brief Exhibit C-3 with copy to Landlord Counsel.

That 5 days after the Filing of the Caddell [Dkt #63 Motion] an Order dated and Filed on June 7, 2010 lacking any Judge signature now appeared in the Clerk of Court Record, [Dkt #64]. Exhibit C-4.

That under date of June 23, 2010 Caddell Filed with the Clerk of Court a Motion, Brief-In-Support and Affidavit. [Dkt's #65,66,67]. The Caddell Brief [Dkt #66] requested expedited ruling due to Appeal Time Frame (pg. 9 4] EXHIBITS NO'S 5 6 & 7.

STATEMENT OF THE ISSUE

Whether the purported Defendant Landlord Counsel's Exhibit B is a bona fide Judgment, as Ordered to be made in a Counsel presented Exhibit A, which gives a basis for an appeal, or whether the [Dkt # 64], Exhibit C-4 is a basis for the appeal, it being Filed within the "Time Frame" of Rule 4(5)(a)(i), M.R. App.P.

ARGUMENT

Plaintiff/Appellant Caddell has laid out his argument in his Exhibit C-3, and Exhibits C-5, C-6 abd C-7 and adopts these arguments into this Opposition Brief by this reference and incorporation so as to keep page level at a minimum.


*CONCLUSION

The Record shows failure of Landlord Counsel, now some 9 months and 19 days after the Court Order that a Judgment be filed still out of compliance with Courts Order dated October 20, 2009 and representing that an unsigned Order made with a rubber stamp of a Judge without jurisdiction meets the Court's mandate of "shall prepare a Judgment".

RELIEF SOUGHT

Plaintiff/Appellant requests that the Defendant/Appellees Motion to Dismiss appeal be denied, as the appeal from the June 7, 2010 Order was timely filed.

Dated this 15 day of July 2010



Charles L. Caddell
Plaintiff Pro Se

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11(4)(d) I certify that this
Opposition Brief has fewer than 1, 250 words, as required by
Mont. R. App P.16(3)

Charles L. Caddell
Charles L. Caddell

CERTIFICATE OF SERVICE

I certify that a true and correct copy of my foregoing
OPPOSITION BRIEF to Helena Elderhousing Inc. and Accessible Space
Inc.'s MOTION TO DISMISS APPEAL was mailed to:

Ian McIntosh - CROWLEY FLECK
45 Discovery Drive
P.O. Box 10969
BOZEMAN, MONTANA 59719-0969

on this 15 day of July 2010

Charles L. Caddell
Charles L. Caddell